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PROTEMP EXHIBITIONS SDN BHD

v.

NG LAI TECK & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[SUIT NO: S1-22-521-2001]
30 JUNE 2006

C ***CONTRACT:*** *Breach - Agreement - Wrongful termination of appointment agreement - Allegation of - Exhibition management contract - Subjective interpretation of - Whether defendants entitled to assess plaintiff's performance to decide continuation - Whether defendants committed breach of terms of agreement - Whether plaintiff's performance*
D *considered subjectively*

CIVIL PROCEDURE: *Trial - Witnesses - Competency of - Whether defendants entitled to rely on counsel to present them in court - Whether defendants entitled to call witnesses to give evidence*

E The plaintiff's claim herein against the defendants was for damages arising out of a breach of event management contract *vide* a written agreement signed between the plaintiff as the exhibition manager and the first defendant and second defendant as joint managers. The plaintiff's case was that pursuant to an agreement
F ('the appointment agreement'), the first and second defendants as joint organizers appointed the plaintiff as the exhibition manager of the Malaysia Furniture Export Exhibition '99, an exhibition on Malaysian quality household and office furniture products (MAFEX '99). Upon the successful management and staging of MAFEX '99
G and MAFEX 2000, the first and second defendants in breach of the provisions of the appointment agreement and without complying with the termination procedure, wrongfully terminated the appointment agreement and the plaintiff's appointment as exhibition managers for MAFEX 2001 and 2002, thus causing loss
H and damage to the plaintiff. The plaintiff contended that the wrongful and premature termination of the plaintiff by the first and second defendants was *mala fide* and calculated to procure unjust enrichment for themselves at the expense of the plaintiff. The joint defence of the defendants were that (1) the plaintiff's performance
I was unsatisfactory and therefore the defendants were entitled not to reappoint the plaintiff for the subsequent years 2001 and 2002

and (2) the claim of plaintiff in any case had been settled by settlement between the plaintiff and the joint organizers – the first and second defendants.

Held (dismissing plaintiff's claim):

(1) The settlement agreement did not say whether the settlement included a settlement not to reemploy the plaintiff for the year 2001 and 2002. It could not therefore be read as a defence to the plaintiff's claim to be employed for the subsequent years. Whether or not the plaintiff succeeded in this action would have to be resolved by the construction of the terms appearing in cl. 3 of the agreement. The said clause conferred upon the defendants the right to assess the plaintiff's performance on a subjective basis. The defendants were the employer of the plaintiff and under the circumstances would be entitled to assess the plaintiff's performance in order to decide whether to continue with its employment for the subsequent years. (paras 6, 7 & 8)

(2) The defendants would be committing a breach of the term of this agreement if and only if they decided not to continue to employ the plaintiff for the subsequent years on other grounds other than on their assessment of the plaintiff's performance as for instance by arbitrarily appointing another party as exhibition manager without even considering the performance of the plaintiff. Evidence showed the defendants had considered the performance of the plaintiff subjectively. (paras 11 & 12)

(3) With respect to the plaintiff's submission that DW1 and DW2 were incompetent to represent the defendants as DW1 was no longer holding the post of president of the first defendant and DW2 was no longer the employee of the second defendant, this court found that the submission was unsustainable. This court also accepted the submission of counsel for defendants that the defendants were entitled to rely on their counsel to present them in court. The defendants were entitled to call any witnesses to give evidence on their behalf with respect to the events that led to the narrative of this case. (paras 14 & 15)

For the plaintiff - S Ashok (TK Wong with him); M/s TK Wong, Tan & Assoc
For the 1st defendant - Wong Kim Fatt; M/s Soh Yok Lam & Co
For the 2nd defendant - Wong Kim Fatt (YS Lee with him); M/s Jeff Leong, Poon & Wong

Reported by Suhainah Wahiduddin

JUDGMENT

Kang Hwee Gee J:

[1] This is my oral judgment:

[2] The plaintiff's claim against the defendants is for damages arising out of a breach of event management contract *vide* a written agreement signed between the plaintiff as the exhibition manager on the one part and the 1st defendant and the 2nd defendant on the other as joint organisers.

[3] The 1st defendant is sued as a society by its office bearers at the time of the alleged breach of contract.

[4] The plaintiff's case may be summarized from the well written submission of the counsel for the plaintiff as follows:

> 1. Pursuant to an Agreement dated 7-1-1999 (hereinafter called "the Appointment Agreement"') the First and Second Defendants as Joint Organisers appointed the Plaintiff as the Exhibition Manager of the MALAYSIA FURNITURE EXPORT EXHIBITION '99, an exhibition on Malaysian quality household and office furniture products (hereinafter referred to as "MAFEX '99").
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> 5. Upon the successful management and staging of MAFEX '99 and MAFEX 2000, the First and Second Defendants in breach of the provisions of the Appointment Agreement and without complying with the termination procedure referred to in paragraph 3(ii) above, wrongfully terminated the Appointment Agreement and the Plaintiff's appointment as Exhibition Managers for MAFEX 2001 and MAFEX 2002, thus causing loss and damage to the Plaintiff.

PARTICULARS

(i) Management Fee for MAFEX 2001 and MAFEX 2002 @ RM150,000.00 per Exhibition	...	RM 300,000.00
(ii) Loss of Commissions for MAFEX 2001 and MAFEX 2002 @ average of RM432,687.93 per Exhibition	...	RM 865,375.86
		RM1,165,375.86

6. The Plaintiff has further lost its goodwill and reputation in the business as Exhibition Managers and have further incurred expenses in setting up the infrastructure, administrative and staff requirements in the expectation that they will be the Exhibition Managers up to the year 2002 and the premature termination without just cause and in breach of the terms of the Appointment Agreement has caused further loss and damages to the Plaintiff.

7. The Plaintiff will further contend that the wrongful and premature termination of the Plaintiff by the First and Second Defendants was *mala fide* and calculated to procure unjust enrichment for themselves at the expense of the Plaintiff AFTER the Plaintiff had already successfully organised and set up a proper administrative and marketing mechanism for MAFEX '99 and MAFEX 2000 which could conveniently be duplicated, adopted and applied for MAFEX 2001 and MAFEX 2002.

8. The Plaintiff claims:

(a) the sum of RM300,000.00 being the loss of the Management Fees;

(b) the sum of RM865,375.86 being the loss of commission;

(c) general damages;

(d) interest at the rate of 8% per annum from the date of the Writ, 25-6-2001, to date of full realization;

(e) costs.

[5] The joint defence of the defendants is two fold:

1. The plaintiff's performance was unsatisfactory and therefore the defendants are entitled not to reappoint the plaintiff for the subsequent years 2001 and 2002.

2. The claim of plaintiff in any case had been settled by settlement between the plaintiff and the joint organisers – the lst and 2nd defendants.

Findings And Decision

[6] The settlement agreement does not say whether the settlement includes a settlement not to reemploy the plaintiff for the year 2001 and 2002. It cannot therefore be read as a defence to the plaintiff's claim to be employed for the subsequent years.

[7] Whether or not the plaintiff succeeds in this action will have to be resolved by the construction of the terms appearing in cl. 3 of the agreement which reads as follows:

> 3. The Joint Organisers agree to re-appoint Protemp as Exhibition Managers for the next 3 succeeding Exhibitions based upon satisfactory performance of Protemp in managing and staging the Exhibition.

[8] The clause in my view confers upon the defendants the right to assess the plaintiff's performance on a subjective basis. This is so because the defendants were the employer of the plaintiff and under the circumstances would be entitled to assess the plaintiff's performance in order to decide whether to continue with its employment for the subsequent years.

[9] In the form that cl. 3 is constructed, the defendants were in a sense a consumer. He was the buyer of the plaintiff's service, The clause gave him the mind to decide whether or not to use the plaintiff's service for the subsequent years. The decision was his alone.

[10] Had it been intended that the continued employment of the plaintiff be subjected to an objective assessment, a reference point would have to be provided in the agreement by which the plaintiff's performance may be judged to determine its performance to be entitled to be engaged for the subsequent shows.

[11] The defendants would be committing a breach of the term of this agreement if and only if they decided not to continue to employ the plaintiff for the subsequent years on other grounds other than on their assessment of the plaintiff's performance as for instance by arbitrarily appointing another party as exhibition manager without even considering the performance of the plaintiff.

[12] The evidence did show that the defendants had considered the performance of the plaintiff subjectively. See evidence of DW1 as summarized in para. 18 of defendants' written submission as follows:

> 18. DW1 had stated there were numerous complaints against the Plaintiff., among them:
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> (a) At the meeting in Classic Hotel, Muar, on 12-3-1999 (Exhibit D2), a few days after MAFEX 1999. Among others PW1, PW2 and DW1 attended this meeting. See attendance sheet, IDD3, and Core Bundle, pp, 12-13,
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> (b) Letter dated 15-9-1999 (AB1, p. 484 copy annexed hereto), voicing dissatisfaction against the Plaintiff.
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> (c) AB1, p. 478, the letter of complaint dated 28-9-1999 (Core Bundle, pp. 15-16) from the 1st Defendant on MAFEX 2000. PW1 himself had agreed that this is a letter of complaint (Notes, p. 5, Answer No. 15).
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> (d) Core Bundle, pp. 19-20, at p. 20, para 3(d), minutes of meeting on 3-11-1999 concerning pressure on the Plaintiff and the schedule.
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> (e) Core Bundle, p. 24, item (1), Exhibit D1, minutes of meeting of 5-11-1999, on dissatisfaction with the attitude of the Plaintiff's workers. This meeting was chaired by DW1 and attended by PW2 (for Plaintiff) and PW3 (for the Mines),
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> (f) Core Bundle, p. 26, items (1) and (2) below, on deadlines of time tables and the unsold space.

[13] The plaintiff's management performance for the previous shows is in this context quite irrelevant.

[14] With respect to the plaintiff's submission that DW1 and DW2 were incompetent to represent the defendants as DWl is now no longer holding the post of president of the 1st defendant and DW2 is now no longer the employee of the 2nd defendant, I

find the submission unsustainable. I accept the submission of counsel for defendants that the defendants are entitled to rely on their counsel to present them in court. The defendants are entitled to call any witnesses to give evidence on their behalf with respect to the events that led to the narrative of this case.

[15] For the foregoing reasons I dismissed the plaintiff's claim with costs.